

REMARKS

Claims 1-11, 40, 41, 46, 47, 52-77, 98 and 100-118 are pending in this application. Claims 97-100 have been objected only as being dependent upon a rejected base claim, and were said to be allowable if suitably rewritten in independent form. Claims 1-11, 40, 41, 46, 47 and 52-77 have been rejected. Claims 1, 3, 62, 66, 72 and 77 have been revised to incorporate the subject matter of claims 97 and 99 that the Office Action deemed to be allowable; consequently claims 97 and 99 have been cancelled (claims 98 and 99 have been revised to suitably alter their dependencies). Claims 101-118 are newly-presented. Claims 1, 3, 62, 66, 72 and 77 are independent.

Support for newly-presented claims 101-118 can be found throughout the application. Claims 101, 102, 104, 105, 107, 108, 110, 111, 113, 114, 116 and 117, which present subject matter that has been cancelled from the independent claims, find support at page 18 of the specification, for example. Claims 103, 106, 109, 112, 115 and 118, which speak of a short-range communicating unit, find support at pages 37-38 of the specification, for example.

The Examiner is thanked for the indicated allowability of claims 97-100. The independent claims have been suitably revised to incorporate the subject matter of claims 97-100, and so are believed to be allowable at least for the same reasons as claims 97-100.

The Examiner is thanked for the telephonic interview conducted on July 20, 2006.¹ During that telephonic interview the undersigned explained Applicant was considering revising the independent claims to include the features of allowable claims 97 and 99 that the

¹ This summary is submitted as the written statement specified by 37 C.F.R. § 1.133(b).

Office Action indicated was allowable. The Examiner, who pointed out he had recently assumed responsibility for this application, said he did not think those features conferred patentability.

Applicant respectfully reminds the Examiner that, where, as here, claims have been found to present allowable subject matter, the M.P.E.P. states the Examiner should give full faith and credit to the prior Examiner's determination of allowability. M.P.E.P. § 706.04

("Rejection of Previously Allowed Claims") states:

A claim noted as allowable shall thereafter be rejected only after the proposed rejection has been submitted to the primary examiner for consideration of all the facts and approval of the proposed action.

Great care should be exercised in authorizing such a rejection.

See Ex parte Grier, 1923 C.D. 27, 309 O.G. 223 (Comm'r Pat. 1923); Ex parte Hay, 1909 C.D. 18, 139 O.G. 197 (Comm'r Pat. 1909).

PREVIOUS ACTION BY DIFFERENT EXAMINER

Full faith and credit should be given to the search and action of a previous examiner unless there is a clear error in the previous action or knowledge of other prior art. In general, an examiner should not take an entirely new approach or attempt to reorient the point of view of a previous examiner, or make a new search in the mere hope of finding something. >Amgen, Inc. v. Hoechst Marion Roussel, Inc., 126 F. Supp. 2d 69, 139, 57 USPQ2d 1449, 1499-50 (D. Mass. 2001).<

(emphasis added).

Accordingly, it is respectfully submitted that the allowability of claims 97-100 should be maintained.

**The Rejection Under
35 U.S.C. § 103(a)**

Claims 1-11, 40, 41, 46, 47 and 52-77 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,332,133 to Takayama in view of U.S. Patent

No. 5,826,241 to Stein et al. and U.S. Patent No. 5,267,314 to Stambler. Applicant respectfully traverses this rejection and submits the following arguments in support thereof.

Each of the rejected independent claims, claims 1, 3, 62, 66, 72 and 77, have been revised to incorporate the subject matter of claims 97 and 99 that the Office Action said was allowable, claims 97 and 99 having provided that the first terminal is a vending machine and the second terminal is at least one of a cellular phone and a PDA. It is therefore respectfully submitted that these independent claims likewise patentably distinguish over the cited art.

Alternatively, this rejection is respectfully traversed on grounds Takayama is not characterized accurately.

Each of the pending independent claims provides that a second terminal has a unique ID information (by way of non-limiting example, this is also discussed at page 22 of the specification). Although the Office Action contends that Takayama teaches such a second terminal having unique ID information in Fig. 2A, Applicant respectfully disagrees. Neither Fig. 2A nor the corresponding disclosure at col. 45, line 49, through col. 52, line 19, describes the use of unique ID for the second terminal. Rather, as shown in Fig. 2A and described at col. 46, lines 11-16, Takayama is understood to employ credit card account number information. Such credit card account number information is not "unique" - a person having two cellphones and using Takayama's system would have the same credit card account number information on both of those phones. Consequently, Takayama's credit card account number information is not unique ID information in the sense of the claimed invention.

Likewise, while Takayama discusses at col. 71, lines 32-40, the use of a unique transaction number, that number relates to the purchase being made, not the cellphone/second terminal being used to effect payment.

Since the characterization of Takayama in the Office Action is not accurate, it is respectfully submitted that this rejection is not well-taken and so should be withdrawn.

The remaining rejected claims, claims 2, 4-11, 40, 41, 46, 47, 52-61, 63-65, 67-71, and 73-76 all ultimately depend from and so respectively incorporate by reference the features of the independent claims just shown to avoid the cited art. These dependent claims therefore patentably distinguish over that art at least for the same reasons as their respective base claims.

For all the foregoing reasons, favorable reconsideration and withdrawal of this rejection are respectfully requested.

CONCLUSION

Applicant respectfully submits that all outstanding rejections have been addressed and are now overcome. Applicant further submits that all claims pending in this application are patentable over the prior art. Favorable reconsideration and withdrawal of those objections and rejections is respectfully requested.

Other than the fee authorized in the accompanying Petition for Extension of Time and the additional claim fee authorized in the Fee Transmittal submitted herewith, no fees are believed to be due in connection with the filing of this paper. Nevertheless, should any fee(s) be deemed now or hereafter due, the Commissioner is authorized to charge all such fees to Deposit Account No. 19-4709.

Favorable consideration and prompt allowance of this application is respectfully requested.

In the event that there are any questions, or should additional information be required, please contact Applicant's attorney at the number listed below.

Respectfully submitted,

/David L. Schaeffer/

David L. Schaeffer
Registration No. 32,716
Attorney for Applicant
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
(212) 806-6677